NOTE ON THE MEETING OF 16 AND 25 MARCH 1992

MULTILATERAL REVIEW

1. The Chairman welcomed delegations to the forty-third meeting of the Group of Negotiations on Services and drew the attention of participants to the agenda contained in GATT/AIR/3299 dated 5 March 1992.

2. Regarding the structure of this multilateral review meeting, he suggested that participants who wished to do so could first comment on their own offers and m.f.n. exemption lists; second, they make general comments about the overall situation with respect to offers and m.f.n. exemptions; third, it might be necessary to have a discussion on how to proceed.

3. Before opening the floor to reactions, the Chairman summarized the current state of play regarding initial commitments and m.f.n. exemptions. On initial commitments, to date forty-three participants had presented conditional offers in trade in services; nineteen of these were revised offers. Furthermore, in accordance with negotiating procedures, the secretariat had on 24 February circulated to participants, who had made offers, summaries of thirteen sets of requests which included both general and country-specific requests. Requests received since then would be similarly summarized and circulated.

4. Regarding m.f.n. exemptions, he said that eighteen participants had submitted draft lists of intentions with respect to m.f.n. exemptions. Most participants had organized the information according to the following headings: description of the measure; the treatment inconsistent with Article II:1 of the Agreement; the intended duration of the exemption; and the conditions which created the need for the exemption. The information varied among participants as to the degree of specificity provided. Sectors covered with respect to intended m.f.n. exemptions included transport (air, maritime, inland waterway and road), and the audiovisual, professional and educational services sectors. To a lesser extent, participants had listed intentions of exemptions in the financial services and basic telecommunications sectors. Measures regarding the regulation of entry visas, residence and work permits, as well as measures regarding or based on agreements on the promotion and protection of investments, social security and medical care had been omitted by a number of participants on the grounds that they fell outside the scope of Article II of the GATS.

5. A number of delegations then announced their intention to submit new or revised offers and some noted that they were in the process of preparing their list of m.f.n. exemption requests. These delegations included Cuba.
Bolivia, Colombia, Iceland, Austria, Nigeria, Poland, Senegal, Yugoslavia, Romania, Czechoslovakia, Egypt, Malaysia, Hungary, China, Gabon, Thailand, Uruguay, Singapore, Peru, Venezuela, Morocco, Bangladesh, Tanzania and the United States.

6. A number of delegations, namely the European Communities, Canada, Japan, Sweden, New Zealand, Chile, Switzerland, Australia, and the United States underlined that they wanted the third round of bilateral services negotiations in March to result in participants taking on comprehensive commitments on market access and national treatment over a wide range of sectors including maritime transport, financial services, business services, value-added telecommunications, and engineering services. It was generally felt by these delegations that improvements were needed in many draft schedules compared to what was so far contained in the offers on the table. It was noted as a source of concern that a large number of participants had not presented any offers at all and those countries were urged to submit offers in order to meet the requirement that all GATS signatories present a schedule of commitments. The representative of India emphasised the need to judge the results of the bilateral negotiations in terms of a balance of benefits for participants, in particular regarding movement of personnel, and not only in terms of sectoral coverage.

7. Some of these delegations pointed out that further work was necessary in reaching consensus on several, mostly technical, scheduling issues. It was necessary, for example, to ensure that a common scheduling approach was adhered to by all participants. The representative of India, supported by a number of delegations, expressed concern about a freewheeling discussion of the scheduling issues and suggested that delegations should submit, in writing, any particular technical questions that they had to the secretariat for the purpose of clarification.

8. The Chairman noted that he and Ambassador Hawes would continue consultations with a view to completing the outstanding technical work on Article XXXIV, Article XXI, as well as the annexes on Air Transport and the Telecommunications.

9. Opening the second session of the multilateral review, the Chairman noted that the consolidated draft list of intentions of individual participants with respect to m.f.n. exemptions had now been made available, on a confidential basis, to those delegations that had made offers and that further lists would be circulated. He suggested that the first agenda item consist of comments on further developments. Second, he suggested that participants address how to organize future work in order to bring the process to a conclusion.

10. The representatives of Austria, Cameroon, Indonesia, Jamaica, Mexico, Morocco, Senegal, and Venezuela commented on their intentions with respect to future submissions. The representative of Indonesia said that his government would submit m.f.n. exemptions only if its specific agreements with contiguous countries required such exemptions. The representative of Senegal said that his government would submit an offer covering
telecommunications and air transport services and also notify its m.f.n. exemptions. The representative of Mexico said that his government had so far determined that no m.f.n. exemptions would be required, but reserved the right to submit a list, should it find necessary. Also, further commitments in its revised offer had resulted from bilateral consultations. The representative of Morocco noted that his country’s revised offer would add two service sectors - financial services and air transport services. The representatives of Austria and Venezuela noted that their revised offers and lists of m.f.n. exemptions would be submitted shortly. The representatives of Cameroon and Jamaica said that they were in the process of submitting offers on initial commitments.

11. The representative of Australia said that if the round was to be brought to a speedy, successful conclusion, there was an obvious need to expedite the work on the initial commitment negotiations. Some of the timing problems being encountered were related to the lack of progress in other areas of the Uruguay Round, such as the market access negotiations. Offers and revised offers were still being, or had yet to be, submitted by many participants and additional m.f.n. exemption lists were yet to be circulated. The third round of bilateral negotiations, scheduled for 9-20 March, had not been completed because of the lack of such information. While there were some offers with which Australia was largely satisfied, there were others which would require further negotiations to improve both coverage and depth of commitments. As a preliminary assessment of the draft m.f.n. lists, it appeared that most countries had made an effort to minimise the number and scope of exemptions. However, in many cases more information was needed to assess the nature and trade impact of the exemptions. Some draft lists did not meet the specific requirements of the Annex on Article II exemptions and its attachment. In particular, the list from the United States stood apart in its extensive sectoral coverage, its allowance for free use of domestic reciprocity and retaliatory measures, and its provision for future as well as existing measures. The United States’ list would basically allow continued use of domestic measures as trade leverage in the sectors concerned which was fundamentally at odds with purpose of the services agreement as m.f.n. was never intended to be a negotiable commitment.

12. The exemptions sought by the United States would be highly significant in terms of world services trade. In financial services, in 1989 U.S. commercial bank assets totalled US$3,586 billion of which 20 per cent were foreign controlled. In telecommunications, total long distance service revenues in 1988 were US$60,903 million and international revenues were about US$2,824 million. In shipping, U.S. imports and exports in 1989 were worth US$146,821 million. If the proposed U.S. exemptions were accepted then Australia would be forced to remove its commitments on these sectors from its offer. The m.f.n. lists of other participants generally demonstrated a commitment to the objectives of the services agreement in achieving multilateral discipline across as wide a range of services as possible. However, some lists covered sectors in which Australia had specific commercial interests and did not wish to see m.f.n. exemptions. These concerns would be pursued in bilateral negotiations. In the twenty-five offers on maritime shipping services, most exemptions were
relatively narrow in scope which was a hopeful sign that countries were willing to work towards achieving the greatest possible base for progressive liberalization in the future. Overall, the final negotiated package should contain a maximum number of commitments and a minimum number of m.f.n. exemptions.

13. The representative of the European Communities said that no party or parties should attempt to seek the effective exclusion of particular sectors via m.f.n. exemptions. Having received lists of m.f.n. exemptions, it was clear that developments since the last stocktaking were at best a standstill and in some respects a step backwards. M.f.n. exemptions had been kept to a minimum by most, but not by all participants. For example, one participant sought an exemption for a broad ranging bilateral agreement and yet made no significant market access commitments in the sector concerned. In another example, a number of proposed exemptions in the maritime sector would be inconsistent with the basic thrust of liberalization. In addition, there were proposals to carve out four key sectors from the agreement: basic telecommunications, financial services, air transport, and maritime transport. These carved out not only existing legislation, but even measures not yet in existence. He warned that if the present scope of commitments and m.f.n. exemptions were maintained, there could be little likelihood of an outcome that the European Community could accept.

14. The representative of New Zealand said that his delegation was pleased to see that most participants had taken a disciplined and restrained approach to m.f.n. exemptions although, in some cases, participants had not followed the relevant provisions of the agreement. For example, it was unclear how it was possible to take an exemption that was not based on a specific measure, or how it was possible to take an exemption for a measure that did not exist. The use of m.f.n. as a bargaining chip was an inappropriate and dangerous misuse of the provisions and would send a retrogressive signal to the negotiations. The appropriate way to achieve a balanced outcome was through the negotiations on initial commitments, not by undermining the obligations of the agreement in carving a whole service sector out of the agreement. This approach would have serious implications for the services agreement and for the Uruguay Round as a whole.

15. The representative of Argentina announced that its revised offer would be submitted shortly covering a wide range of sectors. During the various stages of negotiations to date, the importance attached to the negotiations by major delegations had not been reflected in the levels of commitments offered. The principal parties had taken recourse to m.f.n. exemptions and to horizontal measures that significantly reduced market access. This was a sensitive issue for those developing countries that were looking to the liberalization of certain types of labour-intensive services for certain categories of personnel. It would not be a favourable development for the services negotiations, or for the Uruguay Round, if all participants took the path of using m.f.n. exemptions to undermine commitments.

16. The representative of Canada said that there was little change in the status of negotiations since the last stocktaking meeting. He hoped the
revised schedules still to be submitted would respond more fully to the requests made. However, a large number of participants had not yet submitted schedules. Certain matters in the GATS text needed to be resolved, such as technical issues regarding the drafting of schedules, including the handling of certain tax matters. Many m.f.n. lists seemed to be appropriate although some seemed longer than necessary. This was partly due to misunderstandings of what was covered by the GATS or of what needed an m.f.n. exemption. It was also due to the fact that not all lists used the prescribed format. He acknowledged that, in practice, a connection between m.f.n. and market access was a fact of life. Nevertheless, it was clear that a large and improved market access package had to be ensured based on a strong, binding, across-the-board m.f.n. obligation. The possibility of wholesale carve-outs that effectively removed sectors or undercut the multilateral dispute settlement provisions was disconcerting. Regarding particular sectors, Canada was seeking a substantial package of market access commitments on financial services with wide participation from both developed and developing countries and wanted to prevent the use of m.f.n. exemptions for reciprocity or other similar reasons. On basic telecommunications, he thought that a case for m.f.n. carve-outs had not been made. In maritime transport, a large mass of participants should be prepared to make significant commitments on deep-sea shipping, auxiliary maritime services, and access to and use of port services. He noted that most of the m.f.n. exemptions had no specific time limit and some related to reciprocity agreements. The implications of this kind of exemption for the meaningfulness of commitments, as well as for the value of the multilateral dispute settlement system, needed to be considered if it was to be possible for any party to take unilateral retaliatory measures.

17. The representative of Japan disagreed with the pessimism voiced by other delegations. A number of countries had stated their intention of submitting revised offers and m.f.n. exemption lists. Initial commitment negotiations had produced substantial results, although the results so far were not completely satisfactory. It would be difficult to achieve a meaningful agreement without covering all major sectors of importance, especially maritime services. Use of the m.f.n. exemption list should be restrained; in particular, sectors should not be carved out of the Agreement through m.f.n. exemptions.

18. The representative of Sweden, speaking on behalf of the Nordic countries, said that it was disappointing that only a limited number of offers used a trade liberalizing approach. Those participants that had not made offers should do so and those that had made offers needed to improve the coverage substantially. Some participants had avoided making offers on certain types of trade such as cross-border supply which amounted to unilaterally excluding certain modes of supply from the scope of the agreement. The Nordic countries had made considerable efforts to minimise the m.f.n. exemptions sought and to provide precise information in that regard. Some measures for which exemptions were sought might not be considered necessary by participants; it would be useful to clarify these issues and thus reduce exemption lists. There was concern that the possibility of using m.f.n. to exclude whole sectors from coverage of the agreement both for existing and future measures amounted to unilateral
sectoral exclusions; clearly, the trade effects were large if a large trading country excluded a major sector. One country had done so for maritime transport which would seriously eroode the economic benefits of the GATS for the Nordic countries. M.f.n. exemptions for reciprocity measures were also a concern. Countries with so-called conditional reciprocity measures should be ready to remove them. Finally, he noted that it was extremely difficult to assess the impact of an m.f.n. exemption sought for unspecified future measures. In particular, one major trading partner had taken m.f.n. exemptions so expansive and open-ended that they undermined the whole idea of an agreement based upon m.f.n.

19. The representative of Switzerland said that his government would be in a position to draft a final schedule soon after the outstanding issues requiring clarification had been dealt with. The overall situation was mixed: there had been progress since the last review meeting, but the contents and trade value of offers varied considerably - with some having very far-reaching horizontal reservations and others containing insufficient commitments in the financial services sector. As long as there was no common understanding of the relationship of an m.f.n. exemption to commitments or the treatment of some horizontal measures or how to resolve certain scheduling issues, he considered that the drawing up of final schedules and of m.f.n. lists would hardly be possible.

20. The representative of India said that expectations - that the negotiations on initial commitments would progress rapidly - had not been fulfilled. With respect to offers, one of the major participants had attached notes to its financial services commitment which gave an interpretation of national treatment and referred to "conditions of competition". It was not clear whether this meant that each participant would interpret fundamental parts of the agreements in their own way, or whether it meant to suggest a reopening of negotiations on the national treatment provision, which had been the subject of negotiations for over a year. Clarification of the intentions behind this note were therefore being sought. On m.f.n. exemptions, there was a general understanding that these exemptions would be requested for a measure; they would indicate and justify the deviation in the treatment; and would specify the duration of the exemption. While this approach was reflected in a large number of requests for m.f.n. exemptions, some were being sought for unilateral measures, existing and future, without an indication of the time limit. This amounted to using m.f.n. as leverage for opening markets. He also expressed concern about the effect of excluding certain modes of delivery on the objective of achieving a balance of benefits in the initial commitment negotiations. Finally, he noted that any suggestion that m.f.n. with respect to movement of personnel should be confined only to areas where commitments had been made was a wrong reading of the agreement.

21. The representative of the United States said that his delegation had always seen an important linkage between the level of commitments in the services agreement and the extent to which it would be necessary for certain participants to seek exemptions to m.f.n. treatment. Regarding an assessment of commitments, progress had been disappointing. Sectors of key concern such as financial services, audiovisual services, and basic
telecommunications were not covered sufficiently. In telecommunications, for example, aside from the United States, only four other countries representing fairly small markets had made commitments for significant liberalization. In financial services there were a number of countries which had either expressed significant reservations or made no commitments. In the audiovisual sector, the overall quantity and quality of the offers was very poor at this stage. There was still time to improve the situation.

22. Regarding m.f.n. exemptions, his delegation's view had been consistently maintained that an agreement would only be satisfactory if there was an adequate balance between those partners with open markets who maintained that openness through the m.f.n. principle, and others who made substantial national treatment and market access commitments. The United States was prepared to withdraw its intended m.f.n. exemptions if the overall level of liberalization of markets was acceptable, in particular, in areas such as financial services and telecommunications. For example, the objective in financial services was to obtain balance between a U.S. market which had highly significant foreign participation, on the one hand, and, on the other hand, better opportunities for foreign participation in the markets of other partners. The intention was to achieve an overall result in the negotiations that would commit the major markets of the world, both developed and developing, to a more open regime of international services trade. While accepting that some delegations saw this approach as an inappropriate use of leverage, a final result which committed the United States to maintaining an open regime while not securing openness from other participants would be unbalanced and would create a significant free-rider problem. He also noted that the m.f.n. lists put forward by some other major trading partners had used different means to achieve the same objective as that of the United States. Thus, in summary, the final m.f.n. exemptions put forward would depend on the outcome of the negotiating process on initial commitments.

23. The representative of the European Communities stated that he assumed that the United States' willingness to withdraw m.f.n. exemptions in the light of improved offers by other participants would apply to all areas.

24. The representative of Korea said that his delegation was not encouraged by the recent negotiations on initial commitments. His country had since 1986 undertaken considerable unilateral liberalization of its services markets, a situation which was reflected in the revised offer presented by Korea. He urged participants to make commitments which went beyond the consolidation of existing market openings. Korea had done so, committing itself in many cases to a rollback of existing restrictions. He warned, however, that his country might need to reconsider its offer given the widespread recourse to m.f.n. exemptions on the part of some participants. Sectors such as basic telecommunications, financial services and air transport services were of particular interest to Korea and others and should not be the object of wholesale exemptions.

25. The representative of Peru expressed concern at the recourse to m.f.n. exemptions for telecommunications and financial services on the part of
some participants. As a result of the bilateral negotiations, Peru had added improvements to its revised offer, particularly in those two important services sectors. Given the current situation, however, Peru might need to reconsider its offer in areas where others were seeking wide-ranging exemptions.

26. The representative of Hungary said that his country ranked among those which favoured a wide scope for liberalization commitments in terms of sectoral coverage and modes of delivery and a minimal recourse to m.f.n. exemptions. He doubted whether the momentum could be maintained in the bilateral negotiations on initial commitments given the approach taken by some participants with respect to m.f.n. exemptions. The effective carve-out of certain sectors from the main obligations of the Agreement through recourse to wholesale m.f.n. exemptions introduced a great deal of uncertainty into the negotiations. The representative of Mexico expressed concern at the lack of commitments regarding certain modes of delivery, in particular the movement of natural persons; she agreed with many others in calling into question the recourse to wide-ranging m.f.n. exemptions.

27. The representative of Brazil said that both the original and the revised offers made by his country were built on requests made formally or informally by other participants. Regarding m.f.n. exemptions, the approach followed by some participants sent a fundamentally negative message to the world's services industries. The recourse to m.f.n. exemptions as a means to extract concessions from other participants in certain key sectors seemed to be based on a mistaken evaluation of the negotiating process and was bound to fail, probably causing a negative "domino effect". In this regard, Brazil might need to reconsider both its offer and its intentions with respect to m.f.n. exemptions.

28. The representative of Hong Kong said that his country also favoured stringent disciplines on the recourse to m.f.n. exemptions. Hong Kong had limited the number and scope of m.f.n. exemptions in its list of intentions, deliberately refraining from using such exemptions to increase its negotiating leverage. He stressed that an excessive recourse to m.f.n. exemptions would undermine important progress made in the negotiations of initial commitments, in effect forcing participants, including Hong Kong, to reassess their overall position in the services negotiations.

29. The representative of Turkey said that his country's offer had already been revised in order to expand the sectoral coverage to include the sectors of telecommunications, financial and transport services. As a result of recent bilateral negotiations, Turkey was again in a position to revise its offer. Regarding m.f.n. exemptions, he emphasized that his country's list contained intentions which could be modified depending on further technical work and the position of other trading partners.

30. The Chairman noted that the second review session, given its focus on m.f.n. exemptions, had seemed less positive than the one of 16 March 1992, which had concentrated on progress made in bilateral negotiations on initial commitments. Since then, lists of intentions for m.f.n. exemptions had become available and a deterioration of the constructive approach taken
by many participants in the negotiations of commitments had ensued. This development was serious as it could determine the extent to which the Agreement would be undermined through excessive recourse to m.f.n. exemptions and, possibly, the consequent withdrawal of commitments. Regarding technical issues, he said he intended to conduct intensive consultations on technical issues relating to matters identified in the annotations to the Draft Final Act. He then closed the proceedings.